REMEMBER CRAMDOWN?

Remember cramdown? It was a proposed change to bankruptcy law that would have allowed judges to modify the mortgages on primary homes for people entering bankruptcy. Supporters of the change argued that cramdown would provide an important stick to force lenders into modifying loans—and in so doing help millions of people stay in their homes. Here's how DDay described the thinking behind the House cramdown legislation that passed in March 2009.

> Under the proposal, the banks would be allowed to work out their terms with borrowers first, before resorting to a bankruptcy judge. This is how it worked in the House version of cramdown, which passed in March 2009; the homeowner had to negotiate a voluntary loan mod with the lender before going to the bankruptcy judge. And this may have worked, but only because, for the servicers, cramdown would have loomed in the background as a big stick, forcing a negotiation with a level playing field for the borrower.

In other words, cramdown was meant to give homeowners and the government leverage over servicers and lenders to voluntarily modify mortgages.

I ask whether you remember cramdown, because it doesn't show up in this WaPo story at all. The WaPo allows some anonymous administration officials to claim they couldn't do anything about the abuses now being exposed in the foreclosure process because they wanted servicers' voluntary help on modification programs (basically, the famously unsuccessful HAMP).

> In an interview this week, a senior administration official confirmed that

> the White House and Treasury Department had received warnings that the mortgage industry employed inexperienced staffers to oversee foreclosures, had problems handling documents and communicating with borrowers, and often failed to comply with regulations.
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> But the government had struggled to address shortcomings in the industry, the official said, because the administration was also seeking the servicers' help with modifying the home loans of millions of borrowers to help them avoid foreclosure.
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> In addition, a Treasury official said the federal government's power to tackle problems in the servicer industry is limited because foreclosure law is largely the domain of states.
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> Both officials, who were not authorized to speak on the record but were providing the administration's views on the matter, said problems in the foreclosure process were largely the result of mortgage servicers being overwhelmed.

The massive foreclosure fraud that is about to seize up the economy again wasn't the Administration's fault, these anonymous sources want you to know, because they couldn't do anything about it when they first got warning of it. Oh, and the servicers aren't engaged in fraud, these anonymous sources want you to know, they're just overwhelmed (never mind that if they're overwhelmed, it's partly because they refuse to hire enough people to do foreclosures right, presumably because that would hurt profitability).

Key to this story of the Administration's helplessness is the claim that the only tool they had to get servicers to modify loans was the servicers' good will. Basically, they're

saying that they had to let the servicers (who are also some of the biggest banks) engage in what amounts to fraud, because it was the only way they had to get servicers to participate in HAMP.

Setting aside the fact that a relative handful of people have actually gotten modifications under HAMP (which suggests the Administration was willing to overlook the problems they knew existed in the foreclosure process in exchange for helping just a few people), the claim that allowing those problems to remain was the only way to get banks to participate in HAMP is simply not true.

Or it didn't have to be.

Back in July 2009, when the Administration was sitting on its hands as cramdown failed in the Senate and as Dick Durbin was observing that the banks own the Senate, the Treasury Department's Assistant Secretary for Financial Stability, Herb Allison, testified to Congress that the Administration had all the tools it needed to slow the flood of foreclosures.

> As housing foreclosures top the 1.5-million mark this year, the Obama administration has openly abandoned cramdown as a strategy for tackling the crisis.
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> That approach — which would empower homeowners to avoid foreclosure through bankruptcy — was once a central element of the administration's plans to stabilize the volatile housing market. Some financial analysts say the strategy would prevent 20 percent of all foreclosures. But, appearing before a Senate panel Thursday, two White House officials said that current policies are enough to address the problem.
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> "We have enough tools," Herbert Allison, the Treasury Department's assistant secretary for financial stability, told members of the Senate Banking Committee.

> “The challenge is to roll them out.” The tools Allison invoked are several federal programs that offer financial incentives to mortgage lenders and servicers — the companies that buy the rights to manage loans — to modify the terms of mortgages in efforts to help homeowners escape foreclosure.

Fifteen months ago, according to the Assistant Treasury Secretary, the Administration had all the tools it needed. Now, as the problem of foreclosure fraud is about to explode, a Treasury official and a senior Administration official claim they didn’t have the right tools, they were helpless.

Now, you can argue whether the Administration would have ever been able to get Bad Nelson and Mary Landrieu to vote for cramdown (me, I sort of think comments like Allison’s and Obama’s silence gave the Senators cover to screw homeowners).

But you can’t argue one point: after fifteen months of trusting banksters to do the right thing for homeowners hasn’t worked out so well, the Administration is changing its story about whether it needed more tools to motivate those banksters.